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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 DONALD R. CAMERON, *et al.*,

17 Plaintiffs

18 v.

19 APPLE INC.,

20 Defendant.

Case No. 4:19-cv-03074-YGR-TSH

**DECLARATION OF ETHAN DETTMER IN
FURTHER SUPPORT OF DEFENDANT
APPLE INC.'S ADMINISTRATIVE
MOTION TO SEAL JOINT LETTER BRIEF
REGARDING MOTION FOR SANCTIONS**

Hon. Thomas S. Hixson

1 Pursuant to Civil Local Rule 79-5, I hereby declare as follows:

2 1. I am an attorney licensed to practice in the State of California, and a member of the Bar
 3 of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record for
 4 Defendant Apple Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly
 5 proprietary and confidential information, based on my personal experience representing Apple.¹ I
 6 have personal knowledge of the facts stated below and, if called as a witness, I could and would testify
 7 competently thereto. I submit this declaration in further support of Apple’s Administrative Motion to
 8 Seal Joint Letter Brief Regarding Motion for Sanctions (Dkt. 223).

9 2. The request for relief is narrowly tailored and necessary to the confidentiality of
 10 information in certain documents described below.

11 3. In determining whether to permit documents to be filed under seal, courts in the Ninth
 12 Circuit apply two separate standards: (1) the “compelling reason” test for sealing information in
 13 connection with motions for a determination on the merits of a claim or defense; and (2) the less-
 14 restrictive “good cause” test for sealing information in connection with non-dispositive filings.
 15 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006); *Center for Auto*
 16 *Safety v. Chrysler Grp., LLC*, 809 F.3d 1092 (9th Cir. 2016). Here, the less-restrictive good cause test
 17 applies, because the underlying dispute is non-dispositive.

18 4. Apple operates in an intensely competitive marketplace. It occupies a unique position
 19 as a leader with respect to a number of highly dynamic technologies. Apple has serious and legitimate
 20 concerns that competitors will be quick to pounce on any release of Apple’s highly sensitive,
 21 proprietary information in order to gain competitive advantage. As such, Apple takes extensive
 22 measures to protect the confidentiality of its proprietary information.

24 ¹ Courts in this District routinely grant motions to seal on the basis of declarations of counsel
 25 submitted pursuant to Local Rule 79-5. See, e.g., *In Re Qualcomm Litig.*, No. 17-00108, Dkt. 398-
 26 1 (S.D. Cal. Mar. 3, 2018); *Avago Techs. U.S. Inc., et al. v. Iptronics Inc., et al.*, No. 10-02863-EJD,
 27 Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco Sys., Inc., et al. v. OpenTV Inc., et al.*, No. 13-00282-EJD,
 28 Dkt. 76 (N.D. Cal. Oct. 8, 2018). I am personally familiar with Apple’s safeguarding of
 proprietary information, but if the Court deems this declaration insufficient, Apple respectfully
 requests that it be permitted to file a further declaration supporting filing under seal.

1 5. The Court has “broad latitude” “to prevent disclosure of materials for many types of
 2 information, including, *but not limited to*, trade secrets or other confidential research, development, or
 3 commercial information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002)
 4 (emphasis in original).

5 6. On February 2, 2021, the Court denied Apple’s Administrative Motion to Seal Joint
 6 Letter Brief Regarding Motion for Sanctions without prejudice, directing Apple to file a more narrowly
 7 tailored motion by February 9, 2021.

8 7. In response to the Court’s order, Apple is narrowly tailoring its proposed redactions to
 9 the Joint Letter Brief to align with the information ordered sealed by the Court in connection with
 10 Apple’s subsequently filed motion for sanctions, opposition, and reply.

11 8. Exhibits A–F have already been ordered sealed in their entirety by the Court in other
 12 orders. *See* Dkts. 216 (sealing correspondence between the parties regarding alleged breach of
 13 protective order), 237 (sealing secondary sources relied on by Developer Plaintiffs, the content of which
 14 may reveal in context the confidential information that is the subject of the motion for sanctions).
 15 Apple therefore requests that the Court afford similar treatment to the same documents in the context
 16 of this motion.

17 9. Apple does not seek to seal Exhibit G to the Joint Letter Brief, and is submitting an
 18 unredacted version in connection with this application for public access.

19 10. Apple seeks to partially seal the joint letter brief for sanctions and certain exhibits, which
 20 discuss confidential business information, as well as other information that, when viewed in context of
 21 the other arguments in the motion, could be used to deduce the content of highly confidential
 22 information regarding Apple’s relationships with its business partners, including the financial details
 23 of their arrangement.

24 11. The public disclosure of such information would cause Apple economic harm and put it
 25 at competitive disadvantage. *See Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097
 26 (9th Cir. 2016), *cert. denied sub nom. FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38 (2016)

1 (finding there was a compelling reason for sealing when records contain business information that could
2 be used to harm a litigant's competitive standing).

3 12. In addition to the competitive harms posed by public availability of these documents,
4 public disclosure of this information would risk providing assistance to competitors and third parties
5 seeking to unlawfully access or steal data. Apple takes many steps, and undertakes substantial efforts,
6 to safeguard information—including its trade secrets and data of its customers and developers who use
7 Apple’s technology—and keeping those efforts confidential is important to their effectiveness.

8 13. The information Apple seeks to protect is foundational to its business, and Apple has
9 exerted great effort and undertaken substantial expense to protect such information. Apple has
10 narrowly tailored its sealing request so as to maximize the public's access to court records without
11 jeopardizing Apple's business interests.

12 14. Apple therefore seeks to seal or redact the joint letter brief and supporting exhibits as
13 set forth below.

Document	Redacted Material
Joint Discovery Letter Brief Regarding Motion for Sanctions	Page 3, second full paragraph Page 5, third full paragraph, footnote 2 Page 6, first and fourth full paragraphs Page 7, first full paragraph
Exhibits A–F	Sealed in their entirety per Dkts. 216, 237
Exhibit G	Unsealed

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on February 9, 2021 at Fairfax, California.

/s/ Ethan Dettmer

Ethan Dettmer